IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9656 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VITHALBHAI S CHUDASMA

Versus

STATE OF GUJARAT

Appearance:

MR SR PATEL AMICUS CURIE THROUGH JAIL for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

#. Heard Mr. S.R.Patel, learned advocate who is appointed as amicus curie by the Court vide earlier order dated 27-12-1999 on behalf of the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 29-4-1999 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. The petitioner has moved the present petition through jail. That on direction of the Court, necessary documents are placed on record by the office of the GP. The grounds of detention served and supplied to the detenu and produced on record interalia indicate that in all four criminal cases in between 3rd March 1999 to 15th March 1999 have been shown to have involved the petitioner in the offence made punishable under Section 379 read with Section 114 and / or Section 454, 457, 380 read with Section 114 of IPC etc. That all the cases are pending for trial. Furthermore, three witnesses on assurance of their anonymity have given statement dated 20-4-99 in respect to alleged incidents occurred on 2-4-1999, 10-4-1999 and 10 days prior to the statement respectively. That on the basis of the said material, the respondent No. 2 as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming cancellation of bail granted to the petitioner though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the

subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the petitioner was arrested on 19-3-99 in respect to C.R. No : 155 / 99, 156 / 99 and 157 / 99 registered at Bhavnagar B Division police station and released on bail on 26-3-1999. That the petitioner was arrested on 20-3-1999 in respect to C.R. No : 38/99 registered at Mahuva Police Station and was released on bail on 23-3-1999. That the detaining authority has observed that the detenu having released himself on bail, as per the statement of the anonymous witnesses, he has continued to indulge into anti social activities and as such the detention order is necessary. That nowhere in the grounds of detention, it has been stated as to why the action has not been taken for claiming cancellation of bail if the information of anti social activities of the detenu was placed before the detaining authority. Thus, in the absence of any explanation as no affidavit has been filed on behalf of the respondent despite due service, the impugned order is required to be struck down on the above stated ground.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-4-1999 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - VITHALBHAI SONDABHAI CHUDASMA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 22-2-2000 [A.K.Trivedi, J.]

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